UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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Susan Santosuosso   *
     Plaintiff,   *
                      *
                      *
vs.   *
                      *
                      *
Fortis Benefits Insurance Company   *
     Defendant,   *
****

Civil Action No. 05 10889 WGY

YOUNG, D.J. _as modified_
So ordered as the case management
scheduling order.
        Discovery due ___Dec. 30, 2005___
        Dispositive Motions due Dec. 30, 2005

William G. Young
U.S. District Judge
June 10, 2005

JOINT STATEMENT PURSUANT TO LOCAL RULE 16.1(D)

STATEMENT OF THE CASE

The Plaintiff alleges that in May of 2003, she became entitled to employee group benefits

provided by the Defendant. The Plaintiff alleges that the Defendant committed a breach of

contract by denying benefits that were due to her under the contractual agreement. The Plaintiff

alleges that she was harmed by the Defendant's breach of contract.

The Defendant contends that, as presently drafted, Plaintiff's complaint is a state

common law action for breach of contract. In its answer, Defendant Fortis has asserted the

defense that Plaintiff's claim is governed by the Employee Retirement Income Security Act

(ERISA), 29 U.S.C. § 1001, et seq., and therefore the Plaintiff's sole remedy is under ERISA.

Under ERISA, the Plaintiff is not entitled to a jury trial.

The Defendant contends that, under terms of the Employee Group Long-Term Disability

Benefits plan, Forts has discretion with respect to its claim decisions, and therefore its claim

decision with respect to Ms. Santosuosso must be upheld unless it is found to be arbitrary and

capricious, or an abuse of discretion.

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PROPOSED PRE-TRIAL SCHEDULE

1.   The Parties will make their voluntary disclosures under Fed.R.Civ.P. 26(a) by July 6, 2005.

2.   In ERISA cases such as this, the scope of discovery is extremely limited, if not non-existent. In ERISA cases, the only evidence that the Court should consider are the documents and things in the administrative record that the claim decision maker considered in reaching its decision with respect to the claim. This is particularly true in the present case where Fortis (as alleged by the Defendant) has discretion with respect to its claims decisions. Therefore, the Defendant asserts that there is no need for any discovery in this case.

3.   Motions for summary judgment, if any, must be served and filed no later than December 30, 2005.

4.   If necessary, a pre-trial conference will be scheduled with thirty (30) days of the denial of all motions for summary judgment.

CERTIFICATIONS

Certification forms, as required by Local Rule 16.1(D)(3), will be submitted and filed with the Court at the Scheduling Conference or immediately thereafter.
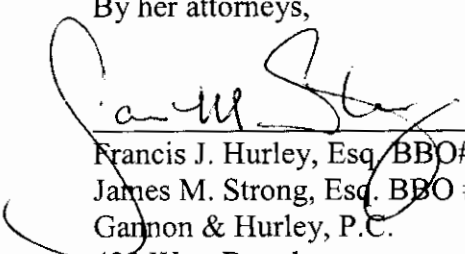
TRIAL BY A MAGISTRATE JUDGE

The Plaintiff is willing to consent to a trial by Magistrate Judge. The Defendant is not willing to consent to a trial by Magistrate Judge.

POSSIBLE RESOLUTION THROUGH ALTERNATIVE DISPUTE RESOLUTION

The Plaintiff is willing to attempt to resolve this matter through mediation. The Defendant is open to consider the subject of mediation, subject to agreement of the parties.
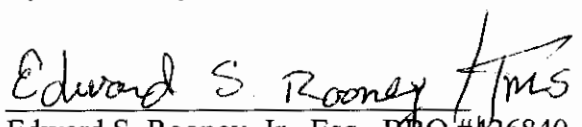
Respectfully submitted,

Susan Santosuosso, Plaintiff By her attorneys,	Fortis Benefits Insurance Company, Defendant By its attorneys,

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        Plaintiff,             *            Civil Action No. 05 10889 WGY
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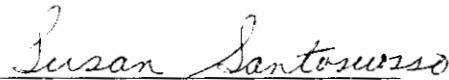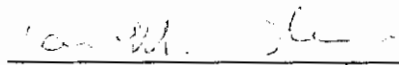
CERTIFICATION OF CLIENT AND COUNSEL

We hereby certify that we have conferred regarding: a budget for the costs of conducting the full course—and alternative courses of litigation—of the litigation; and, the use of various alternative dispute resolution programs.

Respectfully submitted,
The Plaintiff,

Counsel for the Plaintiff,

Susan Santosuosso
Susan Santosuosso

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Dated: 5/3/05